

Amend Sections 150.02 and 150.04  
Title 14, California Code of Regulations  
Re: Permits to Commercially Take Deeper Nearshore Fish Species

- At the February 7, 2003 adoption hearing, the Commission took action to adopt the proposed regulations establishing a permit requirement for the commercial take of deeper nearshore species after taking public testimony on the item. From the range of options provided, the Commission adopted the Department's recommendation to require prior participation at a level of 200 pounds of these species landed between 1994 and 1999 in order to qualify for initial issuance of this permit. Additionally, the Commission set the fee for this permit at \$125 annually.

- A summary of all written comments received by the Commission during the 45-day public comment period, as well as a summary of testimony provided at the

February 7, 2003 adoption hearing, is included in Table 1 attached to this final Statement of Reasons. The Department's responses to these comments are also incorporated in Table 1.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:  
California Fish and Game Commission  
1416 Ninth Street  
Sacramento, California 95814

VIII. Location of Department Files:

Department of Fish and Game  
1416 Ninth Street  
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

The Commission has determined that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

(b) No Change Alternative:

As described in Section IV(a) of the Amended Initial Statement of Reasons, not adopting the proposed regulations would demonstrate an intention to leave the commercial nearshore fishery for black rockfish, blue rockfish, brown rockfish, calico rockfish, copper rockfish, olive rockfish, quillback rockfish and treefish completely open-access. Such an approach conflicts with guidelines in the Marine Life Management Act which stress precautionary management for utilized commercial fishery resources. Establishing control dates in May 2002 for this segment of the nearshore fishery has already served to notice fishermen that limited-access programs may be developed for future implementation and is a recognized strategy outlined in the Commission's policy governing restricted access commercial fisheries.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Each nearshore fishery permittee, buyer or processor is considered a business. The proposed regulations are not expected to have a significant statewide adverse economic impact on businesses. By requiring an aggregate total of 200 pounds landed between 1994-1999, some number of fishermen may be excluded from the fishery at this time. However, as stated in the Amended Initial Statement of Reasons, this regulatory action is considered a "first cut" to address the issue of excess fishing capacity and the long-term viability of the deeper water nearshore fish species. If the development of a formal restricted access program is deemed to have the potential for adverse economic impact, the matter will be addressed at the time those regulations are considered by the Commission.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None

(c) Cost Impacts on a Representative Private Person or Business:

To comply with the proposed action, each private person (small business) who qualifies for initial issuance of a deeper nearshore species fishery permit would incur an annual cost of a \$125 to purchase or renew the permit.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

## Updated Informative Digest/Policy Statement Overview

In May of 2002, the Commission established control dates for nine species of nearshore fish stocks that serve to notify commercial fishermen that if they have not participated in this component of the nearshore fishery prior to 1999, they may not qualify for participation in a fishery for these species under a future restricted access program. These species include black rockfish, blue rockfish, brown rockfish, calico rockfish, copper rockfish, monkeyface eel, olive rockfish, quillback rockfish and treefish, which are the nearshore species for which a Nearshore Fishery Permit is not required. This action demonstrated a willingness by the Commission to proceed with restricting access to this resource.

The Commission is proposing to adopt regulations which would establish a Deeper Nearshore Species Fishery permit specifically to cover the eight rockfish species of this group in order to prevent additional fishing effort on these resources which may occur as a result of displacement from the shallow component of the nearshore fishery, or from closure of shelf rockfish fisheries. This permit would not be required for the commercial take of monkeyface eel. In order to qualify for initial issuance of this permit, the Commission will select from a range of aggregate landings between 0-500 pounds of these rockfish species landed between January 1, 1994 and December 31, 1999.

The Commission will also select a fee for the permit from a range of \$125 - \$1200. Additionally, the regulations also provide permit appeal and renewal processes for the deeper nearshore fishery permit, including provisions for late applicants.

Additional changes are proposed which make minor modifications to existing regulatory language that establishes a control date for a gear endorsement program for these species.

**At the February 7, 2003 adoption hearing, the Commission took action to adopt the proposed regulations described above establishing a permit requirement for the commercial take of deeper nearshore species after taking public testimony on the item. From the range of options provided, the Commission chose to require prior participation at a level of 200 pounds of these species landed between 1994 and 1999 in order to qualify for initial issuance of this permit. Additionally, the Commission set the fee for this permit at \$125 annually.**

## Regulatory Language

### **Section 150.02, Title 14, California Code of Regulations is amended to read:**

~~150.02. Control Date for Other Nearshore Species;~~Control Dates for Other Nearshore Species; Permits to Commercially Take Deeper Nearshore Fish Species.

(a) Permit Required. Effective April 1, 2003, any person taking, possessing aboard a boat, or landing any species of deeper nearshore fish listed in subsection (b) below for commercial purposes shall possess a valid deeper nearshore species fishery permit issued to that person that has not been suspended or revoked, except that when using a boat to take deeper nearshore species at least one person aboard the boat shall have a valid deeper nearshore species fishery permit.

(b) Permit Authorization. Notwithstanding Section 8587 of the Fish and Game Code, a deeper nearshore species fishery permit is required only for the commercial take of the following species of nearshore fish stocks: black rockfish, blue rockfish, brown rockfish, calico rockfish, copper rockfish, olive rockfish, quillback rockfish and treefish.

(c) Permit Revocation. Deeper nearshore species fishery permits are revocable.

(d) Fees. The fee for a deeper nearshore species fishery permit is \$125.

(e) Initial Issuance Criteria. Notwithstanding Section 8587 of the Fish and Game Code, a deeper nearshore species fishery permit shall be issued only to persons who have made landings that cumulatively total 200 pounds of any of the eight species for which a deeper nearshore species fishery permit is required pursuant to subsection (b). Landings must have been made in an individual's name and commercial fishing license identification number and submitted on fish landing receipts to the department pursuant to Section 8043, Fish and Game Code, and must have been made from January 1, 1994 through December 31, 1999. Applications for initial issuance must be received by the department, or, if mailed, postmarked on or before September 30, 2003. Applications received by the department or postmarked from October 1, 2003 through October 31, 2003 must be accompanied by a \$50 late fee.

(f) Appeal. Any applicant who is denied issuance of a deeper nearshore species fishery permit may appeal the denial to the department in writing describing the basis for the appeal. The appeal shall be received by the department, or, if mailed, postmarked on or before March 31, 2004. The appeal shall be reviewed and decided by the department. The decision of the department may be appealed in writing to the commission within 60 days of the date of the department's decision.

(g) Renewal.

(1) Applicants seeking renewal of a deeper nearshore species fishery permit must have held a deeper nearshore species fishery permit in the immediately preceding permit year.

(2) Applications for renewal of a deeper nearshore species fishery permit must be received by the department, or, if mailed, postmarked on or before April 30 of each permit year. Applications received by the department or postmarked from May 1 through May 31, must be accompanied by a \$50 late fee.

(3) Applications for renewal must be accompanied by evidence that the qualification requirements specified in subsection (g)(1) have been met.

~~(a)~~ (h) A control date of December 31, 1999 is established for the purpose of developing a ~~limited~~ restricted access commercial nearshore fishery for those persons taking ~~nearshore fish stocks defined pursuant to Section 1.90~~ nearshore fish stocks not covered under other nearshore control dates or nearshore restricted access programs established in Section 150, Title 14, CCR. Species subject to this control date include only black rockfish, blue rockfish, brown rockfish, calico rockfish, copper rockfish, monkeyface eel, olive rockfish, quillback rockfish and treefish. Landings of these species made after this date may not apply toward qualifying for participation in a future restricted access program for this component of the nearshore fishery.

~~(b)~~ (i) This section does not apply to those nearshore species for which a Nearshore Fishery Permit is required pursuant to Section 150.01.

NOTE

Authority cited: Section 7071 and 8587.1, Fish and Game Code. Reference: Sections 7071, 7852.2, 7857, 7858, 8585.5 and 8587.1, Fish and Game Code.

**Section 150.04, Title 14, California Code of Regulations is amended to read:**

150.04. Control Date for Gear Endorsement Program for Other Nearshore Species.

(a) A control date of October 20, 2000 is established for the purpose of developing and implementing a gear endorsement program for the commercial nearshore fishery for ~~those persons taking species of nearshore fish stocks defined pursuant to Section 1.90.~~ nearshore fish stocks not covered under other nearshore control dates or nearshore restricted access programs established in Section 150, Title 14, CCR, or Section 150.03, Title 14, CCR. Species subject to this control date include only black rockfish, blue rockfish, brown rockfish, calico rockfish, copper rockfish, monkeyface eel, olive rockfish, quillback rockfish and treefish.

(b) In addition to any other requirements the Commission may adopt, in order to be considered for inclusion in a future gear endorsement program described in subsection (a), ~~persons~~ a person must have made at least one landing of ~~nearshore fish stocks~~ the nearshore species described in subsection (a). This landing must be in ~~their~~ his/her own name and commercial fishing license identification number on or before the control date in subsection (a) using a specified gear type (traps and/or hook and line and/or nets) as documented by a fish landing receipt prepared pursuant to Fish and Game Code Section 8043 and submitted to the department pursuant to Fish and Game Code Section 8046.

(c) This section does not apply to those nearshore species for which a Nearshore Fishery Permit is required pursuant to Section 150.01.

NOTE

Authority cited: Section 7071 and 8587.1, Fish and Game Code. Reference: Sections 7071, 8043, 8046, 8585.5, 8586 and 8587.1, Fish and Game Code.